

## **REMARKS/ARGUMENTS**

### **Status of Claims**

Claims 1-13 were originally filed in the present application. These claims were previously subjected to a restriction requirement. As a result, Claims 3-13 have been withdrawn from consideration as drawn to a non-elected invention. As indicated above, newly presented Claims 14 and 15 have been added, and no claims have been amended or canceled. Therefore, Claims 1-15 are pending in this application, however, only Claims 1, 2, 14, and 15 are currently under consideration.

The newly presented claims are fully supported in the application as originally filed. In particular, page 7, lines 13-22, and page 10, lines 3-8, of the specification support Claims 14 and 15.

### **Objections**

The disclosure was objected to because of informalities including apparent inconsistencies between the structure of claims 3-10 and the abstract and that on page 5, lines 1-5 and Examples 5-6. With this Paper, the abstract of the Disclosure has been amended to correct a typographical error where the density is incorrectly identified as 4 grams per cubic centimeter. The correct density should be 0.4 grams. As far as the other portions identified in the Office Action, the language in the specification on page 15, lines 1-5 (not page 5 as indicated in the Office Action) and Examples 5-6 is correct and does not require amendment. Reconsideration of the objections is respectfully requested.

Additionally, the specification has been amended to correct two obvious typographical errors, the first involving the word hydrothermally and the second involving the incorrect patent number of the Friese Patent.

### **Rejections**

Claims 1-2 stand rejected under 35 U.S.C 112, first paragraph, as failing to comply with the enablement requirement. In particular, the Office Action states that the "claim(s) contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. (Office Action, page 3.) Additionally, Claims 1-2 stand

rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. (Office Action, page 5.)

As asserted by the Office Action, the Examiner has the initial burden to establish a reasonable basis to question the enablement provided for the claimed invention. While the analysis and conclusion of a lack of enablement are based on the factors discussed in MPEP 2164.01(a) and the evidence as a whole, it is not necessary to discuss each factor in the written rejection.

The Examiner asks the question “First, what is the claimed invention?” and further states “As set forth in claim 1, the invention is an absorbent tampon comprising an absorbent structure consisting essentially of lyocell fibers. Second, the terminology “consisting essentially of” is interpreted to limit the scope of the absorbent structure to the specified fibers and that which do not materially affect the basic and novel characteristics of such absorbent structure. However, and third, the instant application does not set forth what such “basic and novel characteristic(s)” to be so affected are considered to be, i.e. the application only discloses specific densities and absorbencies of a tampon of specific dimensions consisting of lyocell fibers not the “basic and novel characteristics” of an absorbent structure as claimed.” Office Action, page 4.

Applicant respectfully disagrees with the Office’s characterization of the elements of Claim 1. The claim reads as follows: An absorbent tampon comprising an absorbent structure consisting essentially of lyocell fibers, the tampon having a density of about 0.3 to about 0.5 g/cm<sup>3</sup> and a Syngyna Absorbency of at least about 4.4 g/g.

The claimed invention is “An absorbent tampon comprising an absorbent structure.” The transition phrase “comprising” makes clear that the claimed invention relates to an absorbent tampon that includes, contains, or is characterized by an absorbent structure and is inclusive or open ended and does not exclude additional, unrecited elements or method steps. These elements may include such things as a withdrawal string, a liquid-permeable cover, surfactants and other material treatments or coatings, etc. While the instant specification does not identify these additional elements, two patents have been incorporated by reference: US 5679369 (Additives to Tampons) and US 6310269 (Tampon Especially for Feminine Hygiene and a Process and Apparatus for Producing This). US 5679369 discloses

tampons having absorbent cores, covering, withdrawal strings. (Col. 10, Ins., 43-45; Col. 12, Ins. 31-33; Col. 15, Ins. 18-20; Col. 16, Ins. 22-24.) US 6310269 discloses tampons having a central fiber core and a withdrawal string. (Col. 1, Ins. 44-57.) Since it has been disclosed that an absorbent tampon can have additional elements, Applicant believes that the claim language is correct and respectfully requests reconsideration of this rejection.

Claim 1 further recites “an absorbent structure consisting essentially of lyocell fibers.” By using the transition phrase “consisting essentially of”, the absorbent structure is further limited to lyocell fibers and those materials or steps that do not materially affect the basic and novel characteristic(s) of the absorbent structure. As per MPEP 2111.03, further defining the scope of the claim by use of this transition phrase is acceptable. As disclosed in the instant specification materials such other fibers (page 6-7) and additives such as those on page 7-10 and in US 5679369, can be added to tampons include such items as inhibitory agents can be added without affecting the characteristics of the absorbent structure. In keeping with the claim language, the additional material does not affect the properties of lyocell fibers. Thus, as defined by the claim language, an absorbent structure having these additional materials would fall within the scope of the claim. Applicant believes that the specification is, in fact, enabling as required under §112, first paragraph, as one skilled in the art would be able to make this invention. Additionally, Applicant believes that the invention has been fully described and claimed as required under §112, second paragraph. For these reasons, Applicant respectfully requests reconsideration.

### **Claim Language Interpretation**

Page 6 of the Office Action states that “Claim1 sets forth an absorbent tampon having a specific density and a specific Syngyna Absorbency” and goes onto to state “It is noted while the Test is described generally on page 11, lines 19-24, the specifics of such test have not been set forth nor are such specifics readily available to the Examiner nor has a copy of such FDA regulation been provided to the Examiner.”

Applicant respectfully points out that the Syngyna Absorbency Test is a well-established test which has been referenced in many previously granted US patents and US published applications. This is a standardized test that the FDA has provided in order to set absorbency ranges for commercial tampons and is readily available. Applicant is not sure

what additional information the Examiner is requesting. Clarification is respectfully requested.

As far as the rest of the rejection on page, Applicant is again unclear as to what rejection the Examiner is making. As put forth above in the rejections under 35 U.S.C. 112 section, Applicant has clearly discussed the claim language and hopes that the issues have been addressed. Clarification is respectfully requested.

### **Anticipation Rejection**

Claim 1-2 stand rejected under 35 U.S.C. 102(b) as being anticipated by Woodings et al PCT '133 (WO 98/10133) ("Woodings"). (Office Action, page 6.) For the reasons set forth below the rejection, respectfully is traversed.

The present invention provides a new technique for increasing the absorbency of lyocell fibers. (Page 4, lns. 5-6.) Lyocell is distinct from the rayons used in tampons and does not provide acceptable absorbency. (Page 1, lns. 13-26.) This method involves heating the lyocell fibers in the presence of water within the temperature range of up to 100° C for a period of time to increase the absorbency of the fibers to provide a Syngyna tampon absorbency of at least 4.4 g/g (at a density of about 0.4 g/cm<sup>3</sup>). (Page 4, lns. 7-13.) By using this method, the absorbency of the lyocell fibers can be increased by at least 14% and as much as 30% when treated at 90° C to 100° C. After use of this new technique, lyocell fibers exhibit high absorbency in compressed structures that is similar to the levels of absorbency provided by viscose rayon. (Page 4, lns. 24-27.)

Woodings purports to disclose increasing the absorbency of lyocell fibre by scouring the fibre in hot aqueous alkali, preferably in loose state, for example in 1-6% sodium hydroxide at 90-125° C for 1-10 hours. (Abstract.) Lyocell fibre is a cellulose fibre obtained by an organic spinning process. (Page 1, lns. 28-30.) By scouring the fibre in a hot aqueous solution of alkali the absorbency of the lyocell fibre may be increased. (Page 2, lns. 27-30.) The scouring liquid contains sodium hydroxide as alkali, generally in the concentration of 1 to 6 percent by weight. (Page 3, lns. 9-11.) Example 1 specifically recites bright lyocell staple fibre being scoured and bleached, the scouring performed using aqueous sodium hydroxide in an open vessel at the boil. (Page 6, lns.

18-20.) The tampons in Table 1 were pressed as longitudinally expanding tampons (page 5, line16-17.)

The basis for the rejection is as follows:

See '133 at abstract, last paragraph of page 1, page2 line 27-page 3, line 22, page 4, lines 20-32, page 5, second full paragraph, and thereby GB '637 at page 1, lines 103-110, '133 at page 7, lines 1-19 and page 9, i.e. '133 teaches an absorbent tampon comprising an absorbent structure "consisting essentially of" lyocell fibers, as best understood, see Claim Language Interpretation section supra. The tampon has a density of about 0.3. to about 0.5 grams per cubic centimeter, i.e. about 0.35 and an absorbency of at least about 4.4 g/g as claimed in claim 1 and at least about 5 g/g as claimed in claim 2, see Tables 1 and 3, e.g. No 5 of Table 1. (Office Action, page 6.)

Table 1 on page 7 of Woodings gives further detail including the length after storage and the Syngyna absorbency of the scoured lyocell fibre. The tampon density used in this example is not, however, 0.4 g/cm<sup>3</sup>. Turning to page 5, the weight of the web used to form the tampon is 2.72 + 0.05 g., the average nominal diameter is 15 mm and the average length is 20 mm (although some of the lengths change after storage; each sample length is listed in Table 1). Since each tampon has basically a cylindrical shape, the volume can be calculated using the equation  $\pi R^2 \times L$ , where R is the tampon diameter and L is the length. Using this calculated volume, one can determine the density, which is the ratio of fiber weight to volume. Therefore, the density of the scoured tampons of Table 1 are calculated to be as follows:

Sample Number	Weight	Diameter (mm)	Length (mm)	Density (g/cm <sup>3</sup> )
1	2.72	15	19	0.81
2	2.72	15	20	0.77
3	2.72	15	19	0.81
4	2.72	15	20	0.77
5	2.72	15	22	0.70
6	2.72	15	19	0.81
7	2.72	15	19	0.81

8	2.72	15	24	0.64
9	2.72	15	20	0.77
10	2.72	15	21	0.70
11	2.72	15	22	0.70
12	2.72	15	20	0.77

The average density of the scoured tampons of Example 1 is  $0.76 \pm 0.05$  g/cm<sup>3</sup>.

Claim 1 requires that the tampon have a density of about 0.3 to about 0.5 g/cm<sup>3</sup> and a Syngyna Absorbency of at least about 4.4 g/g. The tampon of Woodings has a density of 0.76 g/cm<sup>3</sup>. This is different than the density required in Claim 1. As Woodings fails to disclose each and every element recited in Claim 1. For this reason, reconsideration is respectfully requested.

Applicant believes that the foregoing presents a full and complete response to the outstanding Office Action. Applicant looks forward to an early notice of allowance for this application.

Respectfully submitted,

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